IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 9.12.2004

Coram

The Honourable Mr.Justice V.KANAGARAJ

Crl.OP.No.33990 of 2004
and
CRL.M.P.NO.10680 OF 2004

Vijai ...Petitioner

-vs-

1.State : represented by
Inspector of Police,
District Crime branch,
Vellore.

2. C.Padmavathi,
W/o Ekambaram,
No.4/7, Taluk Office Road,
Saidapet, Chennai-15. ...Respondents

Impeading the 2nd respondent as per the order of this Court dt.18.11.2004 in Crl.M.P.no.10852 of 2004 by VKJ.

Petition filed under section 482 of Cr.P.C. for the relief as stated therein.

For Petitioner : Mr.K.Srinivasan

For Respondent No.1: Mr. A.N.Thambidurai
Government Advocate (Crl.Side)

For Respondent No.: Mr.Venkatesh

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ORDER

The petitioner has filed the Criminal original petition praying to call for the records relating to the investigation in Crime No.9 of 2004 on the file of the Inspector of Police, District Crime Branch, Vellore and quash the FIR as against the petitioner herein.

2.The case of the petitioner is that the father of the

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petitioner is the Managing Life Trustee of 'Jai Bharat Charitable Trust"; that the trust is running educational Institutions including Priyadarshini Engineering College at Chettiappanur Village, Vaniyampadi; that the trust consists of the Managing Trustee and 13 other life trustees; that due to the difference of opinion among the trustees, dispute arose between them following which Thiru K.T.Anbazhagan, Life Trustee joining with seven other life trustees have filed C.S.No.294 of 2003 before this Court seeking change of administration of the trust from the hands of A1; that pending suit, the trustees have sought for production of accounts and appointment of an Administrator to run the college; that A1, the father of the petitioner herein had consented for the appointment of an Administrator and this Court appointed Mr.Justice V.Rengaswamy, a retired Judge as Administrator pending disposal of the suit.

3. It is the further case of the petitioner that K.T.Anbazhagan along with seven other trustees preferred a false complaint to the Administrator alleging that the first accused is going on collecting a sum of Rs.3500/- from each student towards the Development fees and the said amount was not brought on record;that the Accountant denied that every payment is made only through bank and therefore the Administrator concluded that the allegation is not supported by any material; that the said K.T.Anbazhagan once again preferred a complaint addressed to the Deputy Inspector General of Police, Vellore levelling similar allegations; that the respondent police registered a case in Crime No.9 of 2004 for the offences under Sections 403 and 406 IPC against 4 persons ;that the sum and substance of the complaint is (1) that without authorisation of the Board, a sum of Rs.25 lakhs has been collected towards development charges and the same has been misappropriated by the Managing Trustee(A1) ;(2) that the second allegations is that a sum of Rs.15 lakhs was collected as fine towards late attendance by the students which is also without the authorisation of the Board and the said sum has also been misappropriated by the managing Trustee (3) that the third allegation is that the Internet and browsing equipments and computers are missing from the college and it is alleged that the petitioner(A2) who is the son of the Managing Trustee(A1) is in possession of all those equipments.

4.Heard the learned counsel for the petitioner, learned Government Advocate (Crl.Side) as well as learned counsel for the intervenor, the second respondent herein.

5. During arguments, learned counsel for the petitioner would submit that by no stretch of imagination, it can be said that the ingredients of the offence of criminal breach of trust has been made out against the petitioner. Once the ingredients of the offence under Section 405 IPC is not made out, then automatically 403 IPC and 406 are not attracted. It is also further submitted that an offence under Section 403 IPC is non-cognizable and bailable offence

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. The police officer has got a right to act in accordance with law as per Section 154 Cr.P.C. only if he received information in cognizable cases. In case, the police officer receives information with regard to non-cognizable cases, then as per Section 155 Cr.P.C., he has to necessarily refer the informant to the Magistrate. Sub-Section 2 of Section 155 Cr.P.C. specifically says "No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such cases or commit the case for trial". Therefore, even assuming that an offence under Section 403 IPC is made out against the petitioner, the bar under Sub-clause 2 of Section 155 Cr.P.C. will apply and the police have no power to investigate as against the petitioner herein. It is further submitted that Sub-Clause 4 of section 155 of Cr.P.C. will not apply as far as the petitioner is concerned since no cognizable offence is made out against him. Therefore the inclusion of the petitioner along with others in Crime No.9 of 2004 is illegal and without any jurisdiction.

6.Learned Government Advocate on the Criminal Side filed a counter affidavit and would submit that because of the fact that the Administrator was pleased to forward the complaints to the respondent only after verification of the facts and circumstances. The petitioner being the son of the first accused, has actively involved in the affairs of the trust and now the petitioner cannot claim that he is in no way connected with the affairs of the trust. It is also further submitted that the averment that the offence under Section 403 is not attracted against the petitioner in unsustainable because the petitioner herein had throughout aided and abetted the other accused to indulge in illegal activities. It is also further submitted that even admitting for the sake of argument that Section 406 IPC is not attracted, the case is only under investigation and during the course of investigation, if further evidence come to light, the section can be altered accordingly either before the filing of the charge sheet or at the time of filing charge sheet. Learned Government Advocate(Crl.Side) would further submit that if the above petition is allowed, the petitioner would go scot free inspite of committing the offences and the respondent is not able to verify the records because of the fact that the petitioner along with other accused is absconding and attempting to destroy the available records and further involving themselves in intimidating the staff members and HOD's not to give any statement implicating them. Hence, he would pray to dismiss the above Criminal Original Petition.

7.Learned counsel appearing on behalf of the intervenor/ the second respondent herein would submit that due to difference of opinion among the trustees, K.T.Anbazhagan along with seven others have filed the suit in C.S.No.294 of 2003 before this Court; that pending suit, the trustees have sought for production of accounts and appointment of an Administrator to run the college; that Justice

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Mr.V.Rengaswamy has been appointed as Administrator; in spite of appointment of Administrator, the Managing Trustee has collected several lakhs and the same has been misappropriated by them. The Administrator has filed a contempt petition and the same is pending. Inspite of pendency of the contempt petition, the Internet and browsing equipments and computers are missing from the college and it is alleged that the petitioner who is the son of the Managing trustee is in possession of all those equipments.

8.Inspite of all the above arguments advanced both on the part of the learned counsel for the petitioner and the State and on the part of the Intervenor, the second respondent herein it could be seen that the investigation in the registered case is not yet over and during the course of investigation as per the Judgments of the Hon'ble Apex Court including very recent judgments, the field is entirely occupied by the investigating officer and the Courts are not supposed to cause interference into such an investigation being undertaken by the prosecuting authority in exercise of the powers conferred on them by the Court and therefore it is undesirable for the Courts to cause interference and on this legal dictum this Court does not see any cause to make interference in compliance of the requirements made on the part of the petitioner and therefore the petitioner has to necessarily wait for the investigation to come to a close, since even the investigating officer who has to go into all the aspects of the position of the facts and circumstances and in consideration of the aspects which are brought forth in the above application it has to arrive at its own conclusion in conceding the request of the petitioner which cannot be ruled out at this stage and therefore it is only proper on the part of this Court not to cause its interference thus causing any disturbance to the investigation that is undertaken by the first respondent/appellant and hence the following order:

9.In result,

(i) for the reasons assigned above, this Court is of the view that it is unnecessary to cause its interference as it is prayed for and the only course that is open for this Court is to dismiss the above criminal Original Petition and the same is ordered accordingly.

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(ii)Consequently, Crl.M.P.No.10680 of 2004 is also dismissed.

VJY

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Inspector of Police,
   District Crime branch,
   Vellore.

2. The Public Prosecutor,
   Madras.

+ One CC to Mr.K.Srinivasan, Advocate SR No.54065.

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09.12.2004

PV (CO)
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